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Tax Maven

The Contemporary Tax Journal's Interview of Handy Hevener

By: Jun Xie, *MST Student*



Ms. Mary B. "Handy" Hevener is a partner in Morgan Lewis's Employee Benefits and Executive Compensation Practice. Ms. Hevener focuses her practice on Social Security benefits, executive compensation, and a wide range of fringe benefits. Prior to joining Morgan Lewis, she served as an attorney-adviser for the U.S. Treasury Department's Office of the Tax Legislative Counsel. Ms. Hevener has been a well-known expert in the field of benefits taxation since the 1980s.

I had the pleasure of interviewing Ms. Hevener on November 11, 2014 after we attended the 30th Annual TEI-SJSU High Technology Tax Institute Conference where Ms. Hevener was a presenter. During our conversation, Ms. Hevener shared her experiences in the tax field and offered advice for MST students. Below are the questions asked and a summary of Ms. Hevener's responses.

SJSU CTJ: How did you get involved in the tax field?

Ms. Hevener's mother was a real estate lawyer and worked for a tax firm. So when Ms. Hevener was little, she helped her mother, and found the work quite interesting. At the age of five, Ms. Hevener got her first paid job of filing pages in Tax Management Portfolios for a nickel an hour. From that experience, she found it was more fun to become a tax attorney than a real estate attorney. Therefore, she went to the University of Virginia, which had a fine tax program in its law school. After graduation, she spent three years working at the D.C. law firm that was associated with Tax Management, so she wrote many articles for various Tax Management

publications, while also being an associate working on general tax matters. Then she went to the Treasury Department and worked in the Office of Tax Policy from 1981 to 1984. After that, she joined another D.C. tax boutique law firm. Ms. Hevener says that since the time she could read, she never deviated in wanting to become a tax lawyer.

SJSU CTJ: What led you to specialize in the employee benefits and executive compensation area of tax practice?

Ms. Hevener has always been interested in Social Security, which she thought was an exciting area of law to study. In addition, she is fascinated as to how the tax system operates and why we have a system in the U.S. that works a lot better with respect to having people pay taxes and pay on time. Considering that there are about two hundred million taxpayers but a limited number of IRS auditors, the operation of the tax system has to rely largely on a system of information reporting and withholding. Ms. Hevener found this interesting. Two of her favorite professors from law school were Mortimer Caplin and Edwin Cohen. Mr. Caplin had served as Commissioner of the IRS under President Kennedy, and Mr. Cohen was Under-Secretary for Tax Policy at the Treasury Department. The two professors taught Ms. Hevener not only law cases, but also how the tax law was created and why the system worked. Therefore, Ms. Hevener started thinking about tax system and information reporting and withholding when she was in law school.

Another thing that coincidentally happened was that when Ms. Hevener graduated from law school in 1978, there were a lot of changes to benefit laws, and information reporting and

withholding rules. The Congress had put in place some new laws in this area. Since Ms. Hevener was the youngest attorney at her firm, she was asked to write summaries and articles about these new changes. So, she read about these subjects and really got to know this area at the ground level. When she got to work in the Treasury Department, she went in with some expertise in the benefits area. She worked on administrative aspects of the Social Security Act of 1983, and become even more familiar with this area. Ms. Hevener's strength in the area of Social Security played into her second expertise in executive compensation. In 1993, the Medicare tax became applicable to all wages, so people got more serious about employment taxes. Since Ms. Hevener was known for her expertise in this area, she became the go-to person in her firm. She managed to combine her expertise of Social Security with executive compensation, in designing nonqualified deferred compensation plans for many companies.

SJSU CTJ: What stands out as one or two most significant accomplishments in your career?

Ms. Hevener explained that one of the most frustrating things about tax litigation is winning at the lower court, and then having the result reversed at appeal, particularly when the reversal arises due to a completely separate case, for a different taxpayer. She shared an experience of a case involving tens of millions of dollars in FICA taxes on severance pay. She and her colleagues won the case in the Sixth Circuit Court, but later others argued the case in the Supreme Court and the taxpayer lost. From this experience, she discovered settlement with the IRS or with Justice Department litigators is often the quickest

and most satisfactory way to resolve tax controversies. Then the result cannot be reversed at appeal. These victories happened in a number of cases for Ms. Hevener. She won a case on payroll exemptions for incentive stock options and another on the tax treatment of food in company cafeterias. She finds it to be a great accomplishment to help the clients solve their issues and in the most efficient way.

SJSU CTJ: What do you think is one area related to employee benefits taxation that could or should be improved and why?

Ms. Hevener said it would be great if the Congress would expand the law to allow firms handling payroll tax cases to get their attorneys' fees reimbursed if the taxpayer wins. That change would make a big difference on the IRS's enthusiasm in raising cases that are not compelling. It can take lot of steam out of the desire to litigate when the IRS knows that it would have to pay for the taxpayer's litigation costs if the IRS loses.

SJSU CTJ: What do you think is the biggest challenge facing tax professionals today?

Ms. Hevener thought that the biggest challenge facing tax professionals today is the tremendous amount of time that takes to get a case go through the court. The IRS is so under-staffed and under-budgeted that it may take years to litigate a case. The whole process becomes very frustrating for tax professionals and even more so for their clients. And there are potential liabilities as well as risk of interest and penalties.

SJSU CTJ: What advice do you have for students who are preparing for a career in the tax field?

Ms. Hevener reminded students that a merely "keyword" search is not the only way to resolve an issue. You may get a fast answer, but likely the answer is either wrong or not complete. The Internal Revenue Code has a special structure that is not designed for keyword search. To excel at work, Ms. Hevener encourages students to focus deeply on the research courses, and gain a strong understanding of how the Code is structured and how the legislative process works. She also suggested students spend one or two years working for the U.S. Tax Court, IRS or state tax authority. Students can learn a lot by knowing how the other side works.

Fun Questions:

SJSU CTJ: If you could have dinner with anyone, who would it be?

Ms. Hevener would love to dine with the current editor of the *New Yorker*. She likes the magazine and the *New Yorker* has always been her favorite thing to read.

SJSU CTJ: What is the most unusual item in your office or something that has special meaning?

One item that has special meaning in Ms. Hevener's office is a baseball signed by Bobby Thomson, who hit a home run and helped the New York Giants win in 1951.

One year, to celebrate the birthday of Ms. Hevener's husband, she donated to a charity and asked Mr. Thomson to call her husband who is a great fan of baseball. The next year, Ms. Hevener called Mr. Thomson again indicating she would like to get a signed baseball as a birthday present. She agreed to donate to any charity Mr. Thomson named. However, over the phone, Mr. Thomson suggested that Ms. Hevener give him the money and then he would donate the funds to a charity. Ms. Hevener said, "Oh, I can give you the money but then you will have to report income. I am helping you to save some self-employment tax by donating it directly". She wanted to make sure Mr. Thomson was aware of the tax consequences and was okay with it because there were several tax controversies of underreporting income for famous baseball players at that time. He was surprised and asked how Ms. Hevener would know. She said, "I am a tax lawyer." As an end to the story, in that year, Ms. Hevener got two signed baseballs: one for her husband as a birthday present, and the other one for herself. Written on her baseball: "To Mary Hevener, thanks for the tax advice, Bobby Thomson". It remains one of her prized possessions.

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